

Agricultural Marketing Service, USDA

§ 1170.9

(8) Packaging: 40-pound blocks—Price should reflect cheese wrapped in a sealed, airtight package in corrugated or solid fiberboard containers with a reinforcing inner liner or sleeve. Exclude all other packaging costs from the reported price. Barrels—Exclude all packaging costs from the reported price.

(9) Price: Price should be reported as price per pound or total dollars received. Price is f.o.b. processing plant/storage center.

(10) Include: CCC purchases under the Dairy Price Support and related programs, and CME sales by initial manufacturer.

(11) Exclude: Block cheese that will be aged, transportation and clearing charges from price, intra-company sales, resales of purchased cheese and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed).

(b) Specifications for Butter Prices:

(1) Sale: When a transaction is completed (for example: Butter is “shipped out” and title transfer occurs.) Report sales of butter that meets USDA Grade AA standards, 80 percent butterfat, salted—fresh or storage.

(2) Price: Price is f.o.b. processing plant/storage center. Prices and quantities are for all 25 kilogram and 68 pound box sales.

(3) Include: CCC purchases under the Dairy Price Support and related programs, and CME sales by initial manufacturer.

(4) Exclude: Unsalted and Grade A butter, transportation and clearing charges from price, intra-company sales, resales of purchased butter and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed). This exclusion does not include sales through the Dairy Export Incentive Program (DEIP).

(c) Specifications for Dry Whey Prices:

(1) Sale: When a transaction is completed (for example: dry whey is “shipped out” and title transfer occurs.) Sales are for USDA Extra Grade edible nonhygroscopic dry whey.

(2) Price: Prices is f.o.b. processing plant/storage center. Prices and quan-

ties are for all 25 kilogram bag, 50 pound bag, tote and tanker sales.

(3) Exclude: Sales of Grade A dry whey, sales of dry whey more than 180 days old, transportation charges from price, intra-company sales, resales of purchased dry whey and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed.)

(d) Specifications for the Nonfat Dry Milk Prices:

(1) Sale: When a transaction is completed (for example: nonfat dry milk is “shipped out” and title transfer occurs.) Sales are for USDA Extra Grade and USPH Grade A, non-fortified, non-fat dry milk.

(2) Price: Price is f.o.b. processing plant/storage center. Prices and quantities are for all 25 kilogram bag, 50 pound bag, tote and tanker sales.

(3) Include: Nonfat dry milk manufactured using low or medium heat process, CCC purchases under the Dairy Price Support and related programs, and CME sales by initial manufacturer.

(4) Exclude: Sales of nonfat dry milk more than 180 days old, nonfat dry milk manufactured using high heat process, sales of instant nonfat dry milk, sales of dry buttermilk products, transportation and clearing charges, intra-company sales, resales of purchased nonfat dry milk and forward pricing sales (sales in which the selling prices was set (not adjusted) 30 or more days before the transaction was completed). This exclusion does not include sales through the Dairy Export Incentive Program (DEIP).

§ 1170.9 Storage reporting specifications.

(a) Reporting universe: (1) Cold Storage Report: All warehouses or facilities, except those described in § 1170.16, artificially cooled to a temperature of 50 degrees Fahrenheit or lower where dairy products generally are placed and held for 30 days or more. Excluded are stocks in refrigerated space maintained by wholesalers, jobbers, distributors, and chain stores; locker plants containing individual lockers; and frozen food processors whose inventories are turned over more than once a month.

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(2) Dairy Products Report: All manufacturing plants, packaging plants, distribution points or shipments in transit.

(b) Products required: (1) Natural cheese, domestic and foreign made, including barrel and cheese to be processed; American type cheeses, (cheddar, monterey, colby, etc.), including government owned stocks; Swiss; other natural cheese types (brick, mozzarella, muenster, parmesan, etc.). Exclude processed cheese;

(2) Butter, anhydrous milkfat (AMF), butter oil, and unsalted butter, including government owned stocks;

(3) Nonfat dry milk; and

(4) Dry whey.

§ 1170.10 Records.

Each person required to report information to the Secretary shall maintain, and make available to the Secretary, on request, original contracts, agreements, receipts, and other records associated with the sale or storage of any dairy products during the two-year period beginning on the date of the creation of the records.

§ 1170.11 Confidential information.

Except as otherwise directed by the Secretary or the Attorney General for enforcement purposes, no officer, employee, or agent of the United States shall make available to the public information, statistics, or documents obtained from or submitted by any person in compliance with the Dairy Product Mandatory Reporting program other than in a manner that ensures that confidentiality is preserved regarding the identity of person, including parties to a contract, and proprietary business information.

VERIFICATION AND ENFORCEMENT

§ 1170.12 Verification of reports.

For the purpose of assuring compliance and auditing records and reports required to be filed by manufacturers or other persons, the Agricultural Marketing Service, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where dairy products are produced or stored, and at any time during reasonable business hours shall

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be permitted to inspect such manufacturer or person, and any original contracts, agreements, receipts, and other records associated with the sale or storage of any dairy products.

§ 1170.13 Noncompliance procedures.

(a) When the Secretary becomes aware that a manufacturer or person may have willfully delayed reporting of, or failed or refused to provide, accurate information pursuant to this part, the Secretary may issue a cease and desist order.

(b) Prior to the issuance of a cease and desist order, the Secretary shall provide notice and an opportunity for an informal hearing regarding the matter to the manufacturer or person involved.

(c) The notice shall contain the following information:

(1) That the issuance of a cease and desist order is being considered;

(2) The reasons for the proposed cease and desist order in terms sufficient to put the person on notice of the conduct or lack thereof upon which the notice is based;

(3) That within 30 days after receipt of the notice, the manufacturer or person may submit, in person, in writing, or through a representative, information and argument in opposition to the proposed cease and desist order; and

(4) That if no response to the notice is received within the 30 days after receipt of the notice, that a cease and desist order may be issued immediately.

(d) If a manufacturer or person submits information or requests a hearing, the hearing should be held at a location and time that is convenient to the parties concerned, if possible. The hearing will be held before the Deputy Administrator, Dairy Programs, Agricultural Marketing Service, or a designee. The manufacturer or person may be represented. Witnesses may be called by either party.

(e) The Deputy Administrator, Dairy Programs, Agricultural Marketing Service, or a designee will make a decision on the basis of all the information in the administrative record, including any submission made by the manufacturer or person. The decision of whether a cease and desist order should be issued shall be made within 30 days